IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1778 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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SHIVRAM SHRIDHAR BEHRA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1778 of 2002

MS KD PARMAR for Petitioner No. 1

MR SJ DAVE, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 17/04/2002

ORAL JUDGEMENT

The petitioner has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as `the Act of 1985') by the order dated 14-12-2001 passed by the

Police Commissioner, Surat City and he has been declared as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, she cannot be detained under the Act. Reliance is placed on a decision of the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. Heard learned advocate for the petitioner and learned AGP for the State. Also perused the material on record. It is submitted by the learned advocate for the petitioner that the detaining authority has relied upon a solitary offence registered against the petitioner before Prohibition Police Station, South Zone, Surat being C.R.No.3140 of 2001 dated 11-11-2001 in passing the order of detention. According to learned advocate for the petitioner, the detenu has submitted a representation by R.P.A.D. through advocate to Home Department, State of Gujarat, on 10-1-2002. Producing copy of said representation along with the reply sent by the authority to the detenu, he has contended that representation has been received by the State Government on 11-1-2002 and though it has been rejected on 21-1-2002, same has been communicated to the detenu through Jailor, Porbandar, on 28-1-2002 and hence, there is a delay in deciding the representation and communicating the decision to the detenu. Copy of the reply sent by the Home Department dated 22-1-2002 is ordered to be taken on record. In this connection, he has relied upon the case of Harish Pahwa Vs. State of U.P. and others, AIR 1981 S.C. 1126, more particularly para 3 which runs as under:

> "The representation made by a detenu has to be considered without any delay. The Supreme Court does not look at equanimity upon delays when the liberty of a person is concerned. Calling comments from other departments, seeking the opinion of Secretary after Secretary and allowing the representation to lie without being attended to is not the type of action which the State is expected to take in a matter of such vital importance. It is the duty of the State to proceed to determine representations with the utmost expedition, which means that the matter must be taken up for consideration as soon as such a representation is received and dealt with continuously (unless it is absolutely necessary to wait for some assistance in connection with it) until a final decision is taken and

communicated to the detenu. Where this is not done the detention has to be declared unconstitutional."

4. In the present case, it appears that the detenu has sent the representation on 10-1-2002 to the Home Department, State of Gujarat which was received by the State Government on 11-1-2002 and though said representation has been rejected by the State Govt. on 21-1-2002, same has been communicated to the detenu on 28-1-2002 and hence, there is a delay in deciding and communicating the decision to the detenu. No explanation has been putforward by the authority by filing an affidavit explaining satisfactorily the delay caused in communicating the decision to the detenu and hence, the order of detention is illegal and the same cannot be sustained.

5. The petition is allowed. The impugned order of detention dated 14-12-2001 passed against the detenu is hereby quashed and set aside. The detenu Shivram Shridhar Behra is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no order as to costs. Direct service is permitted.

(R.P.DHOLAKIA,J.)

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